

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Jerry Wilder, #A420-133,	:	Case No. 1:07CV0745
	:	
Petitioner	:	Judge Donald C. Nugent
	:	
v.	:	Magistrate Judge David S. Perelman
	:	
Stuart Hudson, Warden,	:	REPORT AND RECOMMENDED
	:	DECISION
Respondent	:	

This action in habeas corpus, 28 U.S.C. §2254, is before the Court upon respondent's motion to dismiss the petition as time-barred pursuant to the one-year limitation period of 28 U.S.C. §2244(d), which provides:

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review of the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review, or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this submission.

This motion was filed on July 19, 2007, and petitioner has not responded thereto. While this want of opposition alone could call for granting the motion, it is clear that the respondent's position is sound.

Petitioner is incarcerated pursuant to pleas of guilty entered October 3, 2001 in four separate cases in the Common Pleas Court of Cuyahoga County,¹ upon which an agreed term of twelve years imprisonment was imposed.

The effective filing date of the petition in this action is March 14, 2007, slightly more than five years and five months later.

It is clear under controlling Sixth Circuit precedents that petitioner's July 2006 motion for leave to file a delayed appeal, which was denied by the state appellate court on August 3, 2006, and the proceedings before that court and the Ohio Supreme Court consequent thereto would have no effect on the running of the limitation period. This Court sees no point in repeating the cogent arguments set out in defendant's motion in this regard for the purpose of this opinion.

It is, therefore, recommended that respondent's motion to dismiss be granted.

¹In Case Nos. CR101853, CR408898, CR411014 petitioner plead guilty to single counts of possession of drugs, and in Case No. CR411484 the plea was to one count of trafficking in cocaine with juvenile specifications. In each of those cases other counts were nolle pursuant to the plea agreement.

s/DAVID S. PERELMAN
United States Magistrate Judge

DATE: August 20, 2007

OBJECTIONS

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Any objections to this Report and Recommended Decision must be filed with the Clerk of Courts within ten (10) days of receipt of this notice. Failure to file objections within the specified time waives the right to appeal the District Court's order. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). *See, also, Thomas v. Arn*, 474 U.S. 140 (1985), *reh'g denied*, 474 U.S. 1111 (1986).